

Certificates of Rehabilitation Proposal

In 2006, the Connecticut Legislature created the provisional pardon program, which provides a mechanism for removing barriers to employment and licensing that individuals face based on their prior criminal convictions. In 2012, the Connecticut Sentencing Commission recommended legislation to amend the statutes governing provisional pardons. The proposed bill received a favorable report from the Judiciary Committee, but was not ultimately enacted.

Below, we set forth a proposal for legislation for the 2013 Session. This proposal retains key provisions of the 2012 bill, and contemplates adding several additional provisions. The proposal, if enacted, would align CT's policy with recommended best practices for 1) employers regarding the use of arrest or conviction records in employment decisions under Title VII of the Civil Rights Act of 1964, as set forth by an April 2012 Enforcement Guidance update from the Equal Employment Opportunity Commission (EEOC) and 2) recent letters from U.S. Department of Housing and Urban Development (HUD) Secretary Shaun Donovan to both owners of HUD –assisted housing and public housing authorities (PHAs) clarifying HUD's position regarding individuals with criminal record's eligibility for HUD funded housing . The new proposed bill would re-name provisional pardons "Certificates of Rehabilitation" to better describe their purpose and legal effect. In addition, the bill would expedite the process for obtaining Certificates, provide greater guidance to licensing agencies and employers about the effect of the Certificates, provide liability protection to employers who hire employees with Certificates, and allow Certificates to be issued to remove barriers to public housing. Finally, the proposal would prevent the denial of licenses for hairdressers and barbers based on criminal records.

I. Expediting the Application Process

Provisional pardons are intended to help individuals with criminal records to get back on their feet, and these people are often most in need of relief from barriers while on probation or soon after release from prison. The draft bill would expedite the process for applicants to obtain relief by:

- Allowing Superior Court judges, upon the recommendation of probation, to grant Certificates of Rehabilitation in less serious cases during an offender's probation period.

- Allowing both the pardons panels and parole release panels of the Board of Pardons and Paroles to issue Certificates.

II. Providing Guidance and Ensuring Efficacy

The proposed bill would provide greater guidance to licensing agencies and employers in their consideration of applicants with Certificates of Rehabilitation. The current statute states that a provisional pardon is “a form of relief from barriers or forfeitures to employment or the issuance of licenses” but provides no guidance to licensing agencies or employers about how the presence of a provisional pardon should actually impact their decision-making process. To address these concerns, the proposed bill would:

- Provide that a Certificate establishes a “presumption of rehabilitation.” State employers and licensing agencies are already required to consider the age of the conviction, its relationship to the employment or license sought, and evidence of the applicant’s rehabilitation. The Certificate would establish a presumption that the applicant had rehabilitated. The presumption could be overcome, and the state employer and licensing board would retain discretion to deny the employment or license.
- The proposed bill would codify federal law by permitting private employers to reject applicants based on prior criminal convictions only if the rejection is “job related and consistent with business necessity” for the position in question. In addition, the bill would require private employers to consider Certificates, which would establish a “presumption of rehabilitation.”
- Ensure the safety of victims by providing that Certificates shall only be granted if they are consistent with “the safety of any victim of the offense.”

III. Liability Protection for Employees

The proposed bill would provide liability protection for employers who hire individuals with Certificates. Similar provisions are in place in New York, Illinois, and Ohio.

IV. Public Housing

Although access to public housing is a major challenge for individuals with criminal records, the current provisional pardon statutes do not allow removal of barriers to public

housing. Currently under state law, public housing authorities are required to consider evidence of an applicant's rehabilitation before rejecting an applicant based on his or her criminal record. The proposed bill would require housing authorities to consider Certificates, and the Certificate would create a presumption that the applicant had rehabilitated. The housing authority would retain discretion to reject an applicant. Additionally, if an applicant is ineligible for public housing under federal law, the Certificate would not affect the applicant's eligibility in any way.

V. Removing Barriers for Hairdresser and Barber Licenses

Under current state law, applicants for hairdresser and barber licenses may be denied licenses based on their criminal records. The proposed bill would follow the example of recent legislation in Ohio and prevent the denial of applicants for these licenses based on criminal history.